

Lisa M. Schweitzer, Esq. (*pro hac vice*)
CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza
New York, NY 10006
Telephone: (212) 225-2000
Facsimile: (212) 225-3999
Email: lschweitzer@cgsh.com

-and-

James Patrick Shea, Esq.
Nevada Bar No. 405
Bart K. Larsen, Esq.
Nevada Bar No. 8538

SHEA LARSEN
1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
Telephone: (702) 471-7432
Facsimile: (702) 926-9683
Email: jshea@shea.law
blarsen@shea.law

Counsel for Solar Eclipse Fund IX, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:

DORA ROG PROPERTIES, LLC,

- ☐ AFFECTS THIS DEBTOR
☐ AFFECTS DOG BLUE PROPERTIES, LLC
☐ AFFECTS BRANDY BOY PROPERTIES, LLC
☐ AFFECTS 475 CHANNEL ROAD, LLC
☐ AFFECTS PARK ROAD, LLC
☐ AFFECTS 140 MASON CIRCLE, LLC
☒ AFFECTS ALL DEBTORS.

Case No. 19-50103-gs
Chapter 7

Jointly Administered with:
19-50104-gs Dog Blue Properties, LLC
19-50105-gs Brandy Boy Properties, LLC
19-50106-gs 475 Channel Road, LLC
19-50108-gs Park Road, LLC
19-50109-gs 140 Mason Circle, LLC

STIPULATION INCORPORATING
SOLAR ECLIPSE FUND IX, LLC AS A
PARTY TO THE SETTLEMENT OF DC
SOLAR ESTATES AND
FUNDS/INVESTORS' CLAIMS
AGAINST REAL PROPERTY DEBTOR
ESTATES

Hearing Date: May 5, 2022
Hearing Time: 3:00 pm

1 W. Donald Gieseke, Chapter 7 Trustee (the “**Dora Dog Trustee**”), for the jointly
 2 administered estates of Dora Dog Properties, LLC, Dog Blue Properties, LLC, Brandy Boy
 3 Properties, LLC, 475 Channel Road, LLC, Park Road, LLC and 140 Mason Circle, LLC
 4 (collectively, the “**Real Property Debtor Estates**”), Christina Lovato, Chapter 7 Trustee (“**DC**
 5 **Solar Trustee**”) for the substantively consolidated estates of Double Jump, Inc., DC Solar
 6 Solutions, Inc., DC Solar Distribution, Inc., and DC Solar Freedom, Inc. (collectively, the “**DC**
 7 **Solar Estates**”), and Solar Eclipse Fund IX, LLC (“**Fund IX**”), by and through their undersigned
 8 attorneys, hereby stipulate and agree as follows:

9 1. On January 29, 2020, Fund IX filed its original Proofs of Claim in each of the Real
 10 Property Debtor Estates in an unliquidated and in certain instances partially liquidated amount.

11 2. Fund IX did not amend its original Proofs of Claim filed in the Real Property
 12 Debtor Estates’ cases pursuant to the *Amended Notice of Deadline to File Amendments to Existing*
 13 *and Timely Filed Proofs of Claim* filed June 1, 2021 [ECF No. 476], and, thus, Fund IX was not
 14 involved in the settlement conferences the Honorable Natalie M. Cox conducted between the Dora
 15 Dog Trustee, the DC Solar Trustee, the Receivership Funds, the East West/ADHI Funds, and the
 16 Investors¹ (the “**Settlement Conferences**”) that resulted in the Settlement Agreement presented
 17 to this Court on April 7, 2022 in the *Motion for Order Approving Settlement of DC Solar Estates*
 18 *and Funds/Investors’ Claims Against Real Property Debtor Estates pursuant to FRBP 9019* [ECF
 19 No. 651] (collectively, the “**Settlement Motion**” on the “**Settlement Agreement**”).

20 3. After the filing of the Settlement Motion, counsel for Fund IX contacted the Dora
 21 Dog Trustee to determine if it needed to object to the Settlement Motion in order to be included
 22 in the distributions from the Real Property Debtor Estates contemplated by the Settlement
 23 Agreement.

24
 25
 26 ¹ The Receivership Funds, East West/ADHI Funds and Investors are all defined in the Settlement
 27 Agreement attached to the *Declaration of W. Donald Gieseke in Support of the Settlement Motion*
 28 [ECF No. 652], The Receivership Funds and the East West/ADHI Funds will be collectively
 referred to herein as the “**Funds**.”

4. Fund IX is currently neither included in nor a party to the Settlement Agreement. However, in the DC Solar Estates bankruptcy cases, Fund IX settled with the DC Solar Trustee for an allowed general unsecured claim under 11 U.S.C. § 502(a) against the DC Solar Estates in the amount of \$36,603,202.13, and an allowed general unsecured claim under 11 U.S.C. § 502(h) in the amount of \$74,460.74. See *Order Granting Motion for Order Approving Compromise and Settlement Agreement with Solar Eclipse Fund IX, LLC and for Award of Contingency Fee* [ECF No. 2793] [ECF No. 2857].

5. The Dora Dog Trustee and the DC Solar Trustee believe that Fund IX is identically situated to the Funds which have entered into the Settlement Agreement with the Dora Dog Trustee and the DC Solar Trustee under the Settlement Agreement. The Funds alleged direct claims against the Real Property Debtor Estates for injuries they assert fall distinctly upon the individual participants in the business association or involve the participants' contractual rights."² For instance, the Funds alleged that fraudulent inducement claims "are direct because they allege a harm suffered by plaintiff independent of the partnership and a duty to plaintiff that is not merely derivative of [the defendant's] fiduciary duties to the partnership." See *Stephenson v. Citco Grp. Ltd.*, 700 F. Supp. 2d 599, 610-24 (S.D.N.Y. 2010).

6. The Funds further alleged that investments induced by misrepresentations is a direct claim.³ In the cases of the Real Property Debtor Estates and the DC Solar Estates, there is

² *Grigsby & Assocs. v. Rice Derivative Holdings, L.P.*, 2001 U.S. Dist. Lexis 16112, at *5 (S.D.N.Y. Sep. 21, 2001) (emphasis added); *In re Cencom Cable Income Partners*, 2000 Del. Ch. Lexis 10, at *3 (Del. Ch. Jan. 27, 2000) ("A direct claim seeks relief for injuries that fall distinctly upon the individual participants in the business association or involve the participants' contractual rights.").

³ See, e.g., *In re Smith Barney Transfer Agent Litig.*, 765 F. Supp. 2d 391, 399 (S.D.N.Y. 2011) (recognizing that investment induced by misrepresentations was direct claim); *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372, 401 (S.D.N.Y. 2010) (tortious inducement was direct claim); *Poptech, L.P. v. Stewardship Inv. Advisors, LLC*, 849 F. Supp. 2d 249, 263 (D. Conn. 2012) (non-disclosure in offer and sale of securities was direct claim); see *Askenazy v. KPMG LLP*, 83 Mass. App. Ct. 649, 655, 988 N.E.2d 463, 468 (2013) (recognizing inducement based claims as an injury to those induced and not a harm to the partnership); *Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 Del. Ch. Lexis 133, 2005 WL 2130607, at *12 (Del. Ch. Aug. 26, 2005) ("Generally, non-disclosure claims are direct claims.").

no dispute that the Paulette and Jeffrey Carpoﬀ perpetrated an elaborate fraudulent scheme premised upon inducing investors, through misrepresentations, to invest in their DC Solar companies. It is undisputed that the Funds were induced by the Carpoﬀs to invest in the Double Jump Estate’s DC Solar companies through false misrepresentations—investments they would not have otherwise made. See *Wells Fargo Capital Fin., LLC v. Noble (In re R.E. Loans, LLC)*, 519 B.R. 499, 513 (Bankr. N.D. Tex. 2014) (“[T]he fact that the bankruptcy estate may have claims for its own direct injuries that it could have brought as of the commencement of the case does not mean that the creditor’s claims are merely derivative of the debtor’s.”).

7. Based on the analysis which the Funds provided at the Settlement Conferences, the DC Solar Trustee and the Dora Dog Trustee have agreed to include Fund IX in the Settlement Agreement submitted with the Settlement Motion to share pro rata on account of its general unsecured claim with the other settling Funds.

8. Fund IX filed amended Proofs of Claim in the Real Property Debtor Estates’ cases on April 25, 2022, in the amount of \$36,603,202.13, which is the amount of Fund IX’s allowed general unsecured claim under 11 U.S.C. § 502(a) in the DC Solar Estates’ cases. This allowed claim is consistent with the claims allowed for each of the Funds under the Settlement Agreement. Therefore, Fund IX will have an allowed general unsecured claim under the Settlement Agreement in the amount of \$36,603,202.13.

IT IS SO STIPULATED.

DATED this 3rd day of May, 2022.

By: /s/ Jeffrey L. Hartman

Jeffrey L. Hartman, Esq.

Nevada Bar No. 1607

HARTMAN & HARTMAN

510 W. Plumb Lane, Suite B

Reno, NV 89509

T: (775) 324-2800

F: (775) 324-1818

notices@bankruptcyreno.com

Counsel to Christina Lovato, Chapter 7 Trustee

By: /s/ Steve R. Harris

Steve R. Harris, Esq.

Nevada Bar No. 001463

HARRIS LAW PRACTICE LLC

6151 Lakeside Drive, Suite 2100

Reno, NV 89511

Telephone: (775) 786-7600

steve@harrislawreno.com

Counsel for the W. Donald Gieseke, Chapter 7 Trustee

1 By: /s/ Lisa M. Schweitzer

2 Lisa M. Schweitzer, Esq.

3 Cleary Gottlieb Steen & Hamilton LLP

4 One Liberty Plaza

5 New York, NY 10006

6 Telephone: (212) 225-2000

7 lschweitzer@cgsh.com

8 -and-

9 James Patrick Shea, Esq.

10 SHEA LARSEN

11 1731 Village Center Circle, Suite 150

12 Las Vegas, Nevada 89134

13 Telephone: (702) 471-7432

14 jshea@shea.law

15 *Counsel for Solar Eclipse Fund IX, LLC*